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October 23, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: June 16, 2006
Case Number: TSO-0399

This decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the Individual") to obtain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹

I. BACKGROUND

The present case involves an individual who has applied for a DOE access authorization. A Local Security Office (LSO) conducted an investigation of the Individual's background in order to determine his eligibility to possess a DOE access authorization. That investigation revealed that the Individual had been arrested for alcohol-related offenses on at least six occasions, during the period beginning in January 1978 and ending in September 2004. This information raised substantial doubts about the Individual's eligibility to obtain a DOE access authorization. Accordingly, a Personnel Security Interview (PSI) of the Individual was conducted on November 1, 2005.² When this PSI failed to resolve the security concerns raised by the Individual's six alcohol-related arrests, the LSO asked the Individual to submit to an examination by a DOE Psychiatrist. On December 19, 2005, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file. On January 12, 2006, the DOE Psychiatrist issued a report in which he opined that the Individual met the criteria for Substance Abuse, Alcohol set forth in Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition- Text Revised.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The transcript of this PSI appears in the Record as DOE Exhibit 8.

(DSM-IV-TR). DOE Exhibit 7 at 20. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his Alcohol Abuse.³ DOE Exhibit 7 at 20.

The LSO concluded that the Individual failed to resolve the substantial doubts about his eligibility for a DOE access authorization raised by his Alcohol Abuse diagnosis. Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for an access authorization (the Notification Letter). The Notification letter alleges that the Individual has

Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse, 10 C.F.R. § 710.8(j) (Criterion J), [and]

An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability, 10 C.F.R. § 710.8(h) (Criterion H).

The Individual filed a request for a hearing in which he made a general denial of the allegations

³ In his Report of Examination the DOE Psychiatrist opined that in order to establish *rehabilitation*, the Individual must either

- (1) Produce documented evidence of attendance at Alcoholics Anonymous (AA) with a sponsor and [work] through all of the 12 steps with a sponsor at least twice a week for a minimum of 200 hours over at least . . . two year's time and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of two years. [or]
- (2) Satisfactorily complete a professionally run, alcohol treatment program, either inpatient or outpatient, including aftercare, for a minimum of six months and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of three years following the completion of the program.

DOE Exhibit 7 at 20. The DOE Psychiatrist further opined that in order to establish *reformation*, the Individual must either

- (1) [Go] through one of the two rehabilitation programs [described] above, [followed by] a minimum of two or three and a half years of abstinence from alcohol and all non-prescribed controlled substances. . . . [or]
- (2) [Have a] minimum of five years of abstinence from alcohol and all non-prescribed controlled substances.

DOE Exhibit 7 at 21.

contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer.

At the Hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented two character witnesses. The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0399 (hereinafter cited as "Tr.").

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

A reliable diagnosis of Alcohol Abuse raises significant security concerns under Criteria J and H. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, 25 DOE ¶ 82,755 (1995) (affirmed by OSA, 1995). In these proceedings, Hearing Officers have found that an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that an individual will fail to safeguard classified matter or special nuclear material.

The Individual apparently questions the DOE Psychiatrist's diagnosis of Alcohol Abuse. At the Hearing, the Individual's representative suggested that the DOE Psychiatrist's examination of the Individual was perfunctory and of insufficient duration to allow for an accurate diagnosis of the Individual. Tr. at 33.

However, the DOE Psychiatrist's diagnosis of Alcohol Abuse is well supported in the Record. The Record indicates that the Individual's first alcohol-related arrest occurred on January 28,

1978, when he was arrested for “Battery on a Peace Officer and Unlawful Rescue.” DOE Exhibit 7 at 7, 15. The Individual’s second alcohol-related arrest occurred on January 18, 1981, when he was arrested for Driving While Intoxicated (DWI). DOE Exhibit 7 at 4, 14-15. The Individual’s third alcohol-related arrest occurred on May 21, 1983, when he was arrested for DWI for the second time. DOE Exhibit 7 at 10, 13-15. The Individual’s fourth alcohol-related arrest occurred on October 1, 1996, when the Individual was arrested for aggravated DWI. DOE Exhibit 7 at 9, 17-19. The Individual’s fifth alcohol-related arrest occurred on February 7, 1998 when he was arrested for Aggravated Driving Under the Influence (DUI). DOE Exhibit 7 at 9, 21, 61. The Individual’s sixth alcohol-related arrest occurred on September 11, 2004, when the individual was arrested for DUI. These six alcohol-related arrests strongly indicate a recurrent and persistent pattern in which the Individual’s alcohol indulgence has resulted in (1) his failure to fulfill major role obligations at work, (2) recurrent substance abuse in physically hazardous situations, and (3) recurrent alcohol related legal problems.

In an attempt to undermine the Alcohol Abuse diagnosis, The Individual also contends that he met with a substance abuse counselor who screened him for alcohol and drug issues and found none. Tr. at 24, 27. Interestingly, the Individual did not call that counselor to testify on his behalf at the Hearing. In fact, the Individual did not offer any expert testimony in support of his contention that he was not properly diagnosed with Alcohol Abuse. Accordingly, I find that the Individual was properly diagnosed with Alcohol Abuse.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual’s eligibility for access authorization. *See Personnel Security Hearing*, Case No. VSO-0244, 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing*, Case No. VSO-0154, 26 DOE ¶ 82,794 (1997) (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in determining whether an individual’s access authorization should be granted after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by his Alcohol Abuse. After considering all of the evidence in the record, I find that he has not done so.

The Individual is still consuming alcohol. Tr. at 16, 29. However, the Individual asserts that he has greatly reduced his alcohol consumption. Tr. at 29. The Individual testified that he does not currently have an alcohol problem, even though he had one in the past. Tr. at 30. The Individual testified that he is not currently undergoing any treatment for alcohol issues. Tr. at 30.

In support of his contention that he no longer has an alcohol problem, the Individual notes that he has successfully completed a court-ordered DWI education program. Tr. at 21; Individual’s Exhibit 4. In addition, the Individual has had an interlock device placed in his motor vehicle which tests his breath for alcohol before allowing his motor vehicle to be started. Tr. at 21; Individual’s Exhibit 5. These minor actions, in and of themselves, are hardly sufficient to provide rehabilitation or reformation of an Individual’s Alcohol Abuse.

The testimony of the DOE Psychiatrist convinced me that the Individual is not sufficiently reformed or rehabilitated to resolve the security concerns raised by the Individual's Alcohol Abuse. The DOE Psychiatrist remained in the hearing room and observed the testimony of the Individual. The DOE Psychiatrist was then called to the stand. At this point the DOE Psychiatrist testified that, in his opinion, the Individual had not shown that he had been sufficiently reformed or rehabilitated. Tr. at 31-32. Specifically, the DOE Psychiatrist stated, in pertinent part:

He was still drinking when I saw him. I mean his last drink was, you know, a week or two before I saw him. He hadn't gone through any formal rehabilitation. He hadn't been to [Alcoholics Anonymous]. You know he has absolutely no insight at all. In my opinion, with five DUIs, how could you say you don't have an alcohol problem? You know to me, that's, in the vernacular, a slam dunk. You have to have an alcohol problem if you have five DUIs.

Tr. at 38. I found the DOE Psychiatrist's testimony to be credible and entitled to great weight. I therefore conclude that the Individual has not resolved the security concerns raised by his diagnosis of Alcohol Abuse.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria H and J. Therefore, the Individual has not demonstrated that granting him a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual should not be granted an access authorization. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: October 23, 2006